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a search engine such as the Google search engine, located at [www.google.com](http://www.google.com), for the phrase "belly of the curve". Upon Applicant's submission of such a search, no less than 70 websites using the phrase were identified. Nearly all of the sites focused on the analysis of data. It is clear from this search that the term "belly" is a term of art, in the area of data analysis, and that those skilled in the art understand the meaning of this term. As one of ordinary skill in the art will understand upon reading the Application, the B component can be understood as a degree value for which curvature departs from zero. Curvature is defined as the degree of curving of a line. Also, curvature can be characterized, at a point on a curve, as the derivative of an inclination of a tangent to the curve with respect to arc length. The B component can also be understood as an expression of the speed of approach of a curve to an asymptote. An asymptote is defined as a straight line approached by a given curve as one of the variables in the equation of the curve approaches infinity. Those skilled in the art also understand that the degree of belly in a curve refers to a point in a given curve at which the curve's degree of curvature has its greatest value. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw these rejections in view of the above understandings.

Claims 1, 10, 19, 28, and 36 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the rejections recited the limitation slope component". Although Applicant believes that those skilled in the art would understand that "a component from the curve representing a slope term" is the slope component. For the sake of clarity, Applicant has removed the term "term" from claims 1, 10, 19, 28, and 36. The Examiner is thanked for identifying this difference in language and based upon the described amendment, Applicant respectfully requests that the Examiner reconsider and withdraw these rejections.

### Inventorship

The article "Advertising Exposure and Advertising Effects: New Panel-based findings" was written by Michael von Gonten and James F. Donius. The current application discloses the inventor of the pending invention as Michael von Gonten. The Examiner believes that due to the somewhat similar subject matter between the disclosure of cited article and the instant application, clarification of the inventorship of the Application is requested.

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The Applicant believes that there are distinct differences in the teachings of the cited article and the Application and that there is substantial inventive subject matter in the Application that is not recited in the cited reference, and accordingly, Applicant asserts that the inventorship of the Application is correct.

For example, the cited reference does not discuss a formula to be applied to data, to predict the future volume penetration of a product or for use in analyzing the efficacy of future advertising. Nor does the reference provide the specific elements to be utilized in such a formula according to the teachings of the present invention. Specifically, the cited reference does not discuss the relationship between the slope of the data and the number of weeks. The reference does not discuss the relationship between a (B) value and the number of weeks since the product launch. Further, the reference does not teach or suggest the interrelationship between the slope, the number of weeks, and the use of (B) as an exponent with respect to the number of weeks. The reference also does not disclose the use of a predetermined (B) value for a group or class of different products. Additionally, none of the structural embodiments, such as a system including at least one web page are taught or suggested in the cited reference. Accordingly, Applicant asserts that there is a substantial amount of novel subject matter disclosed in the Application as compared with the cited reference. Therefore, the Applicant believes that inventorship has been clarified and is correct in the present case.

#### §103 Rejection of the Claims

Claims 28-33, 35-39, and 42 were rejected under 35 USC § 103(a) as being unpatentable over von Gonten et al. "Advertising Exposure and Advertising Effects: New Panel-based findings" Journal of Advertising Research, 37 (4), pgs. 51-60 (1997). Applicant respectfully traverses the single reference rejection under 35 U.S.C. § 103, since not all of the recited elements of the claims are taught or suggested in the von Gonten et al. reference. Applicant assumes that the Examiner is taking official notice of the missing elements, since it is clear that not all elements are present in the cited reference. Applicant respectfully objects to the taking of Official Notice with a single reference obviousness rejection and, pursuant to M.P.E.P. § 706.02 (a), Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of the missing elements as claimed.

The Examiner correctly stated that, among other things, the von Gonten et al. reference, does not expressly disclose:



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- (1) retrieving a component of the curve (B) representing a degree of belly of the curve;
- (2) retrieving a component from the curve representing a slope term (S); and
- (3) the specific formula:  $\text{Predicted} = \text{Exp}(S) \times W^{(B)}$ .

As stated with respect to the issue of inventorship, the cited reference does not discuss a relationship model, or formula, to be applied to received product purchase data using a set of computer executable instructions, e.g. software means, to cause a device to accurately predict future penetration of a product in the marketplace. Nor does the reference teach or suggest a mechanism, as afforded by the present invention, for analyzing the effectiveness of promotions and/or advertising as compared to the predicted product penetration in "off-air" weeks. Additionally, the cited reference does not discuss the relationship between the slope of the data and the number of weeks, nor does the reference discuss the relationship between a (B) value and the number of weeks since the product launch. Further, the reference does not teach or suggest the interrelationship between the slope, the number of weeks, and the use of (B) as an exponent with respect to the number of weeks being analyzed. The reference also does not disclose the use of a predetermined (B) value for a group or class of different products in performing an analysis.

Applicant asserts that none of the above referenced elements or formulas would have been obvious from reading the cited reference. The Examiner has provided no evidence to support that those skilled in the art would be able to determine the correct elements and create a formula to be executed in an analysis by a set of computer executable instructions using those elements as claimed by the Applicant. Instead, the Examiner provides a single reference and that reference identifies distinctly different elements that are used to analyze data. That is, the von Gonten et al. reference does not teach the identification and use of the elements of the claimed invention. Specifically, the von Gonten et al. reference uses a model having three different criteria, namely, (1) the degree of curvature, (2) the length of the purchase cycle for the category, and quite differently (3) the absolute values of the curve. *See beginning at col. 1, line 8 of the first full para., on pg. 54.* These criteria are not used, as claimed in the present invention. More importantly, applying the criteria in the reference would not produce the inventive results afforded by the present invention. Any teaching for a model based upon the elements in the cited reference is contrary to that claimed by Applicant.

Claims 1-27, 34, 40, 41, and 43-46 were rejected under 35 USC § 103(a) as being unpatentable over von Gonten et al. "Advertising Exposure and Advertising Effects: New Panel-

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based findings" Journal of Advertising Research, 37 (4), pgs. 51-60 (1997), in view of Eder (U.S. Patent No. 6,321,205). The Examiner asserts that those skilled in the art upon viewing the von Gonten et al. and Eder references would be able to create the embodiments of the invention provided in claims 1-27, 34, 40, 41, and 43-46.

As stated above with respect to the rejection of claims 28-33, 35-39, and 42, the von Gonten et al. reference does not teach or suggest all of the elements as claimed in each of the Applicant's independent claims. The reference does not teach or suggest a system having a set of computer executable instructions, e.g. software means, operable thereon which apply specific relational elements in the analysis of product volume penetration data. In fact, the reference teaches and suggests different elements and criteria be applied to the data to make projections. As such, the teachings and suggestions of the reference are inoperable and inapplicable to the present invention. The Eder reference also does not teach or suggest all of the claimed elements and, therefore, does not cure the deficiencies of the von Gonten reference.

Each of the Applicant's independent claims recite a specific relationship model, or formula, to be applied to received product purchase data using a set of computer executable instructions, e.g. software means, to cause a device to accurately predict future penetration of a product in the marketplace. No art has been cited which teaches or suggests the claimed elements. Specifically, no relationship model, or formula, applied by a set of computer executable instructions, e.g. software means, for:

- (1) retrieving a component of the curve (B) representing a degree of belly of the curve;
- (2) retrieving a component from the curve representing a slope (S); and
- (3) performing a calculation to produce a predicted or continued market penetration value using the B component and the slope component in a formula, wherein the formula is:

$\text{Predicted} = \text{Exp} (S) \times W^{(B)}$  is evidenced in the cited reference.

Each and every element as contained in the Applicant's independent claims is neither taught nor suggested in the cited reference.

Applicant asserts that the creation and application of computer executable instructions in the claimed invention is non-obvious over the cited reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103 rejection for the same, as well as those claims which depend therefrom.

The dependent claims of this Application, namely 2-9, 11-18, 20-27, 29-35, and 37-46 depend directly or indirectly, from one of the independent claims 1, 10, 19, 28, and 36, and are

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patentable over the cited references for the reasons argued above, and are additionally allowable based upon their individual claim elements not argued herein.

Requirement for Information

The Examiner requested, under 37 CFR §1.105, that the Applicant provide the following information that the Examiner has determined is reasonably necessary to the examination of this Application. The Examiner has requested the information to identify the products and services embodying the disclosed subject matter of projecting market penetration and identifying the properties of similar products and services found in the prior art. Specifically, the Examiner requests information concerning the speech delivered by the Applicant at the ESOMAR seminar held in Rome in November of 1996, the methodology disclosed in the speech, and the equations and methods used in both this speech and the new article "Advertising exposure an advertising effects: New Panel-based findings" by the Applicant and James F. Donius, dated July/August of 1997.

Applicant respectfully points out to the Examiner that, on Page 1 of the reference in the left side margin, the authors of the reference state that the cited reference is an "expansion and update of that speech" subject. Thus, the content of the requested information would be cumulative and indeed be less inclusive in view of the information presently before the Examiner. That is, according to the Applicant's best knowledge and belief the requested information is wholly contained in the cited reference.

Claim Amendments

Claims 1, 10, 19, 28, and 36 have been amended for the sake of clarity and not in view of any of the cited art.

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Conclusion

Applicant respectfully submits that, as amended, the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 659-9340 to facilitate prosecution of this application.

Respectfully Submitted,

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By their Representatives,

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Date 12/2/2002 By 

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 3rd day of December, 2002.

Sarah L. Reinhard

Name

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Signature

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